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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. In the report, submitted to the Council pursuant to its resolution 25/38, the special rapporteurs present a compilation of practical recommendations for the proper management of assemblies. In each section of the compilation the special rapporteurs provide a summary of applicable international legal standards, followed by practical recommendations on how those principles might be implemented, with the aim of ensuring better protection of the various rights of those engaged in assemblies.

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I. Introduction

1. Assemblies in various forms play a prominent role in the world today, presenting new opportunities and challenges. A clear understanding of the applicable international human rights law and standards, and of the lessons learned in the management of assemblies over time, can help to protect the legitimate interests of everyone involved — assembly participants, bystanders, monitors and authorities.

2. The Human Rights Council has dedicated increasing attention to the promotion and protection of human rights in the context of assemblies.[1] In March 2014, it adopted resolution 25/38, in which it requested the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions to prepare a compilation of practical recommendations for the proper management of assemblies.[2]

3. In developing those recommendations, the special rapporteurs consulted extensively with relevant stakeholders, as requested by the Council, via questionnaire and participatory consultation. The special rapporteurs held four consultations with State representatives,[3] and four regional consultations with civil society, national human rights institutions, regional human rights mechanisms and policing and other experts.[4] A nine-member advisory panel was convened and has provided feedback to the special rapporteurs at various stages of the process.[5]

4. This compilation is aimed at providing guidance on how applicable international human rights standards may be operationalized in domestic law and practice to ensure greater protection of the rights involved. The recommendations are organized around 10 overarching principles, and in each section are preceded by a summary of applicable international standards. The recommendations have been developed with reference to global experience and lessons learned.

II. The proper management of assemblies

5. The ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry. Assemblies can make a positive contribution to the development of democratic systems and, alongside elections, play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes.

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[1] See A/HRC/19/40, A/HRC/22/28, and A/HRC/25/32 and Corr.1.

[2] The assistance of Eleanor Jenkin and Kathleen Hardy in writing this report is acknowledged with gratitude.

[3] The first meeting was held in Geneva in June 2015. As a result of a request made by States during that meeting, regional consultations were held for States from Africa and the Middle East (Pretoria) and the Asia and Pacific region (Istanbul, Turkey). A final consultation for all States was convened in Geneva in October 2015, which 54 States attended.

[4] These consultations took place in Santiago (Americas and the Caribbean), Pretoria (Africa and Middle East), Istanbul, Turkey (Asia and the Pacific) and Geneva (Europe and Central Asia). More than 90 experts participated in the consultations.

[5] The members of the advisory panel are: Otto Adang; Stuart Casey-Maslen; Gastón Chillier; Anara Ibraeva; Asma Jahangir; Neil Jarman; Nicholas Opiyo; Ambiga Sreenevasan; and Jürg Wichtermann.

6. Assemblies are also an instrument through which other social, economic, political, civil and cultural rights can be expressed, meaning they play a critical role in protecting and promoting a broad range of human rights. They can be instrumental in amplifying the voices of people who are marginalized or who present an alternative narrative to established political and economic interests. Assemblies present ways to engage not only with the State, but also with others who wield power in society, including corporations, religious, educational and cultural institutions, and with public opinion in general.

7. The full and free exercise of the right to freedom of peaceful assembly is possible only where an enabling and safe environment for the general public, including for civil society and human rights defenders, exists and where access to spaces for public participation is not excessively or unreasonably restricted. Barriers to forming and operating associations, weak protection from reprisals for those exercising and defending human rights, excessive and disproportionate punishments for violations of the law, and unreasonable restrictions on the use of public spaces all negatively affect the right to freedom of peaceful assembly.

8. The proper management of assemblies requires the protection and enjoyment of a broad range of rights by all the parties involved. Those who take part in assemblies have a number of protected rights, including the rights to: freedom of peaceful assembly, expression, association and belief; participation in the conduct of public affairs; bodily integrity, which includes the rights to security, to be free from cruel, inhuman or degrading treatment or punishment, and to life; dignity; privacy; and an effective remedy for all human rights violations.

9. Even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to the normal limitations. No assembly should thus be considered unprotected.

10. An "assembly", generally understood, is an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations (see A/HRC/20/27, para. 24). Even sporting events, music concerts and other such gatherings can potentially be included. While an assembly is defined as a temporary gathering, this may include long-term demonstrations, including extended sit-ins and "occupy"-style manifestations. Although an assembly has generally been understood as a physical gathering of people, it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.

11. The focus of the recommendations is on assemblies that express a common position, grievance, aspiration or identity and that diverge from mainstream positions or challenge established political, social, cultural or economic interests. In adopting this approach, the special rapporteurs have been guided by the language used in Human Rights Council resolution 25/38, in which the Council refers specifically to the promotion and protection of human rights in the context of peaceful protests. It should be noted, however, that none of the rights enjoyed by the participants of an assembly are in any way contingent upon the political, or other, content of that assembly's expression.

12. In the resolution the Council requests the special rapporteurs to focus on assemblies, and does not confine those to peaceful assemblies. As a result, both peaceful and non-peaceful assemblies are covered in the present report.

13. States have an obligation not only to refrain from violating the rights of individuals involved in an assembly, but to ensure the rights of those who participate or are affected by them, and to facilitate an enabling environment. The management of assemblies thus

encompasses facilitation and enablement, and is interpreted in this broad manner throughout the following recommendations.

A. States shall respect and ensure all rights of persons participating in assemblies

14. International law requires that States respect and ensure the rights of all individuals. The obligation to respect rights means that States must refrain from restricting the exercise of the rights where it is not expressly allowed under international law. The obligation to ensure is a positive duty that requires States both to fulfil and to protect rights.[6] The protection of rights requires that positive measures be taken to prevent actions by non-State actors that could interfere with their exercise. The fulfilment of rights requires States to create, facilitate or provide the necessary conditions for the enjoyment of rights.

15. States must respect and ensure rights without discrimination on the basis of any prohibited ground, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies.[7]

16. Particular effort should be made to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination. This includes women, children and young people, persons with disabilities, non-nationals (including asylum seekers and refugees), members of ethnic and religious minorities, displaced persons, persons with albinism, indigenous peoples and individuals who have been discriminated against on the basis of their sexual orientation or gender identity (A/HRC/26/29). This duty may require that authorities take additional measures to protect and facilitate the exercise of the right to freedom of assembly by such groups.

17. **Practical recommendations:**

(a) **States should ratify relevant international treaties and should establish in law a positive presumption in favour of peaceful assembly. They should provide legal protection for the different rights that protect those engaged in assemblies and enact and continuously update the laws, policies and processes necessary to implement these rights. No assembly should be treated as an unprotected assembly;**

(b) **States should ensure that all laws relating to the management of assemblies are drafted unambiguously and are consistent with each other and with international standards. Where ambiguity exists, the relevant provision(s) should be interpreted in favour of those wishing to exercise their right to freedom of peaceful assembly;**

(c) **States should develop, enact and update a national action plan to guide the implementation of the present practical recommendations and the international standards relevant to the management of assemblies, and should seek technical assistance from the Office of the United Nations High Commissioner for Human Rights or other specialized agencies where appropriate;**

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[6] European Court of Human Rights, *Plattform Ärtze für das Leben v. Austria*, application No. 10126/82, 21 June 1988.

[7] See Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly* (2010), para. 2.5.

(d) **States should provide the necessary support to, and sufficient oversight of, the authorities involved in the management of assemblies, at all levels of government. This includes sufficient training and necessary financial and human resources;**

(e) **Political and other leaders should publicly recognize that there is room for differences of opinion and promote a culture of tolerance.**

B. Every person has the inalienable right to take part in peaceful assemblies

18. Because international law recognizes an inalienable right to take part in peaceful assemblies, it follows that there is a presumption in favour of holding peaceful assemblies. Assemblies should be presumed lawful, subject to the permissible limitations set out in article 21 of the International Covenant on Civil and Political Rights.[8] The protection of the right to freedom of peaceful assembly extends only to those assemblies that are peaceful. In determining whether an assembly is protected under this right, the peacefulness of an assembly should be presumed,[9] and a broad interpretation of the term "peaceful" should be afforded.[10] Regard must be given to the manner in which the assembly is held and to the intentions of the participants.

19. The right to freedom of peaceful assembly includes the right to plan, organize, promote and advertise an assembly in any lawful manner. Any restrictions on such activities should be considered as a prior restriction on the exercise of the right. Restrictions on freedom of association and of expression may also effectively serve as a restriction on freedom of peaceful assembly.

20. The right to freedom of peaceful assembly is held by each individual participating in an assembly. Acts of sporadic violence or offences by some should not be attributed to others whose intentions and behaviour remain peaceful in nature.[11]

21. Freedom of peaceful assembly is a right and not a privilege and as such its exercise should not be subject to prior authorization by the authorities. State authorities may put in place a system of prior notification, where the objective is to allow State authorities an opportunity to facilitate the exercise of the right, to take measures to protect public safety and/or public order and to protect the rights and freedoms of others. Any notification procedure should not function as a de facto request for authorization or as a basis for content-based regulation. Notification should not be expected for assemblies that do not require prior preparation by State authorities, such as those where only a small number of participants is expected, or where the impact on the public is expected to be minimal.

22. Any notification procedure(s) should not be overly bureaucratic, and should be subject to a proportionality assessment.[12] The notice period should not be unreasonably long, but must allow sufficient time for relevant authorities to prepare appropriately for the assembly. The notification procedure should be free of charge (see A/HRC/23/39, para. 57) and widely accessible.

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[8] See A/HRC/23/39, para. 50, and OSCE, *Guidelines*, para. 30.

[9] See A/HRC/20/27, para. 26, and A/HRC/23/39, para. 50.

[10] Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein, Engel, 2005), p. 487.

[11] European Court of Human Rights, *Ziliberberg v. Moldova*, application No. 61821/00, 4 May 2004.

[12] See A/HRC/20/27, para. 28, and Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), para. 137.

23. Failure to notify authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly. Where there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment (see A/HRC/20/27, para. 29). This applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organizer exists. Spontaneous assemblies should be exempt from notification requirements,[13] and law enforcement authorities should, as far as possible, protect and facilitate spontaneous assemblies as they would any other assembly.

24. The State's obligation to facilitate and protect assemblies includes simultaneous assemblies and counter-protests, in which one or more assemblies aim to express discontent with the message of other assemblies. Assemblies, including spontaneous assemblies and counter-protests, should, as far as possible, be facilitated to take place within sight and sound of their target.[14]

25. The State's obligation to facilitate extends to taking measures to protect those exercising their rights from violence or interference.[15] The mere existence of a risk, however, is insufficient for prohibiting an assembly.[16] Where the risk of violent clashes between participants within or between assemblies exists, the least restrictive measures must be taken to ensure the safety and security of participants and others.

26. While organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others.[17] To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.

27. No person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest.

28. **Practical recommendations:**

(a) **States must ensure that any system of prior notification gives effect to the presumption in favour of assemblies, places narrow limits on the discretion of authorities to restrict assemblies, and incorporates a proportionality assessment;**

(b) **States should not require organizers to obtain prior authorization to hold an assembly, in law or practice. Where a notification system is in place, it must facilitate peaceful assembly, and must not operate as a de facto requirement for prior authorization;**

(c) **Notification systems must not be overly bureaucratic. Measures to simplify the notification process may include: multiple lodgement points, including outside of urban areas, and in-person and assisted lodgement; the use of forms that**

[13] European Court of Human Rights, *Bukta v. Hungary*, application No. 25691/04, 17 July 2007.

[14] However, where a counterdemonstration has been organized with the intention of interfering with the rights of others to lawfully assemble, the counterdemonstration will fall within the ambit of article 5 of the International Covenant on Civil and Political Rights, and the protections afforded in respect of the right to freedom of peaceful assembly will not apply.

[15] See European Court of Human Rights, *Ozgur Gundem v. Turkey*, application No. 23144/93, 16 March 2000, paras. 42-43.

[16] See European Court of Human Rights, *Alekseyev v. Russia*, application Nos. 4916/07, 25924/08 and 14599/09, 21 October 2010, para. 75.

[17] See A/HRC/20/27, para. 31, and A/HRC/23/39, para. 78.

are easily accessible, concise and available in a variety of languages. Where Internet penetration is high, authorities should consider using online lodgement systems;

(d) **Any notice period must be as short as possible, while still allowing the authorities sufficient time to prepare for the assembly — a maximum of several days, ideally within 48 hours;**

(e) **Notification should be deemed to have been completed when a notice providing sufficient information for the authority to reasonably determine the date, time and location of the assembly and, when relevant, contact details of the organizer, has been received. A response from the authority is not required to complete notification or for the assembly to proceed;**

(f) **Where notification is submitted for two or more assemblies for the same place and time, the authorities should conduct a thorough assessment of any risks and develop strategies for their mitigation. Where it becomes necessary to impose restrictions on one or more simultaneous assemblies, those restrictions should be determined through mutual agreement or, where this is not possible, through a process that does not discriminate between the proposed assemblies.**

C. Any restrictions imposed on peaceful assemblies shall comply with international human rights standards

29. Freedom of peaceful assembly is a fundamental right, and should be enjoyed without restriction to the greatest extent possible. Only those restrictions which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others, and are lawful, necessary, and proportionate to the aim pursued, may be applied. Any restrictions are to be the exception rather than the norm, and must not impair the essence of the right.[18]

30. To satisfy the requirement of lawfulness, any restrictions imposed must have a legitimate and formal basis in law (the legality principle), as must the mandate and powers of the restricting authority.[19] The law itself must be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach.[20] To conform to the principle of proportionality, any restriction must be appropriate to achieve its protective function. To meet the necessity requirement it must also be the least intrusive instrument among those which might achieve the desired result.[21] It must be narrowly tailored to the specific aims and concerns of the authorities, and take into account an analysis of the full range of rights involved in the proposed assembly. In determining the least intrusive instrument to achieve the desired result, authorities should consider a range of measures, with prohibition a last resort. To this end, blanket bans, including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly (see A/HRC/23/39, para. 63).

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[18] See Human Rights Committee, general comment No. 27 (1999) on freedom of movement, para. 13.

[19] See OSCE/ODIHR, *Guidelines*, para. 35, and European Court of Human Rights, *Hyde Park and others v. Moldova*, application No. 33482/06, 31 March 2009.

[20] See European Court of Human Rights, *Hashman and Harrup v. the United Kingdom*, application No. 25594/94, 25 November 1999, para. 31, and *Gillan and Quinton v. the United Kingdom*, application No. 4158/05, 12 January 2010, para. 76.

[21] See Human Rights Committee, general comment No. 27, para. 14.

31. When a State invokes national security and protection of public order to restrict an assembly, it must prove the precise nature of the threat and the specific risks posed.[22] It is not sufficient for the State to refer generally to the security situation. National, political or government interest is not synonymous with national security or public order.

32. Assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic.[23] Any use of public space requires some measure of coordination to protect different interests, but there are many legitimate ways in which individuals may use public spaces. A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance.[24]

33. Participants in assemblies are free to choose and express the content of their message. Restrictions on the content of assemblies may be imposed only in conformity with the legitimate limitations on rights outlined above, for example, where the message advocates national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Where a content-based restriction is justified, authorities should take the least intrusive and restrictive measures to address the issue.

34. "Time, place and manner" restrictions refer to prior restrictions regarding when, where and how an assembly may be conducted. Such restrictions should never be used to undermine the message or expressive value of an assembly or to dissuade the exercise of the right to freedom of assembly.

35. The onus of justifying a limitation rests with the authority. If any restriction is imposed there should be an option for organizers to seek judicial review and, where relevant, administrative review, that is prompt, competent, independent and impartial.[25]

36. **Practical recommendations:**

(a) **Laws governing State conduct in relation to assemblies should be drafted unambiguously and should incorporate legality, necessity and proportionality tests. Laws should state clearly the body with authority and responsibility for receiving and responding to notifications, which should be independent of undue interference. This body should not be granted excessive discretion: the criteria upon which it can impose restrictions should be publicly available and must accord with international human rights law and standards;**

(b) **Proposed restrictions should be put in writing, justified and communicated to the organizers, including the justification for the restriction, allowing an opportunity for the organizers to make submissions and to respond to any proposed restriction;**

(c) **Proposed restrictions should be communicated in a time frame prescribed by law, allowing sufficient time for an appeal — or urgent interim relief — to be completed before the proposed time of the assembly;**

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[22] See Human Rights Committee, communication No. 1119/2002, *Lee v. the Republic of Korea*, Views adopted on 20 July 2005, para. 7.3.

[23] See A/HRC/20/27, para. 41, and ODIHR/OSCE *Guidelines*, para. 20.

[24] European Court of Human Rights, *Kuznetsov v. Russia*, application No. 10877/04, 23 October 2008, para. 44, and Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, para. 197.

[25] Human Rights Council resolution 25/38; see also A/HRC/20/27, para. 42.

(d) **Laws should provide access to administrative remedies. However, exhaustion of administrative remedies should not be a prerequisite for an organizer to seek judicial review.**

D. States shall facilitate the exercise of the right of peaceful assembly

37. The positive obligation of the State to ensure rights requires that authorities facilitate assemblies. States should plan properly for assemblies, which requires the collection and analysis of information, anticipation of different scenarios and proper risk assessments. Transparent decision-making is central to the process of planning and facilitating assemblies and in ensuring that any action taken by law enforcement is proportionate and necessary. Contingency plans and precautionary measures must also be put in place. Proper planning and preparation requires continuous monitoring of activities and should be adaptable to changing circumstances.

38. The proper facilitation of assemblies also benefits from effective communication and collaboration among all relevant parties (see A/HRC/17/28, para. 119). Open dialogue between authorities (including the authority responsible for receiving notices and law enforcement officials) and, where identifiable, assembly organizers before, during and after an assembly enables a protective and facilitative approach to be taken, helping to defuse tension and prevent escalation.[26] Law enforcement agencies and officials should take all reasonable steps to communicate with assembly organizers and/or participants regarding the policing operation and any safety or security measures.[27] Communication is not limited to verbal communication and law enforcement officials must be trained on the possible impact of any indirect communication that may be perceived by organizers and participants as intimidation, for example, the presence or use of certain equipment and the body language of officials.

39. Effective communication depends on a relationship of trust. Law enforcement agencies should continually work on strategies to build trust with the communities they serve. The demographic makeup of law enforcement agencies should be representative of the whole community. There should be a free flow of information before and throughout assemblies, and all relevant parties should be informed of any changes in context and circumstance. Communication and dialogue by assembly organizers and participants must be entirely voluntary, and must not formally or informally impose on organizers an obligation to negotiate the time, place or manner of the assembly with the authorities. Such requirements would be tantamount to restricting the planned assembly (see A/HRC/23/39, para. 56).

40. The State's obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance[28] and clean-up services.[29] Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.

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[26] Geneva Academy of International Humanitarian Law and Human Rights, *Facilitating Peaceful Protests* (2014), p. 16.

[27] See European Court of Human Rights, *Frumkin v. Russia*, application No. 74568/12, 5 January 2016, paras. 127-128.

[28] See principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

[29] OSCE/ODIHR, *Guidelines*, para. 32.

41. A primary function of law enforcement, in addition to the obligation to facilitate, is protecting the safety and rights of those who participate in assemblies, as well as monitors and bystanders.

42. Law enforcement officials must be adequately trained in facilitating assemblies. This training should include proper knowledge of the legal framework governing assemblies, techniques of crowd facilitation and management, human rights in the context of assemblies and the important role assemblies play in a democratic order. Training must include soft skills such as effective communication, negotiation and mediation allowing law enforcement officials to avoid escalation of violence and minimize conflict.[30]

43. Use of the tactic of stop-and-search by law enforcement against individuals organizing or participating in an assembly may affect the rights to liberty and bodily security, as well as privacy. Stop-and-search must not be arbitrary and must not violate the principle of non-discrimination. It must be authorized by law, necessary and proportionate.[31] The mere fact that an individual is participating in a peaceful assembly does not constitute reasonable grounds for conducting a search.

44. The authority to arrest can play an important protective function in assemblies, by allowing law enforcement to remove from an assembly individuals who are acting violently. The term "arrest" refers to any deprivation of liberty, and is not limited to formal arrest under domestic law. It is critical that arrest powers are exercised consistently with international human rights standards, including those relating to the rights to privacy, liberty, and due-process rights.

45. No one may be subject to arbitrary arrest or detention. In the context of assemblies this has particular import for the criminalization of assemblies and dissent. Arrest of protestors to prevent or punish the exercise of their right to freedom of peaceful assembly, for example on charges that are spurious, unreasonable or lack proportionality, may violate these protections. Similarly, intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence actually exists. "Mass arrest" of assembly participants often amounts to indiscriminate and arbitrary arrests.

46. Where an arrest takes place detention conditions must meet minimum standards. This applies to any location or situation in which an individual has been deprived of his or her liberty, including jails, holding cells, public spaces and vehicles used to transfer detainees, and any other location in which detainees are held. Detainees must be treated in a humane manner and with respect for their dignity,[32] and shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment.

47. The imposition of administrative detention is especially troubling. The Human Rights Committee has emphasized that such detention, not in contemplation of prosecution on a criminal charge, presents severe risks of arbitrary deprivation of liberty.[33]

48. The issue of proportionality is particularly relevant to administrative sanctions imposed in the context of assemblies. Any penalty must not be excessive — for example, a disproportionately large fine. Such penalties raise due-process concerns, and may have a chilling effect more broadly on the exercise of the right to freedom of peaceful assembly.

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[30] See principle 20 of the Basic Principles, and OSCE/ODIHR, *Guidelines*, para. 147.

[31] Working group on protecting human rights while countering terrorism, *Basic Human Rights Reference Guide: The Stopping and Searching of Persons* (September 2010).

[32] Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

[33] See the Committee's general comment No. 35 (2014) on liberty and security of person, para. 15.

49. **Practical recommendations:**

(a) **States should promote diversity in law enforcement, so that communities see themselves in the police. This requires a sufficiently representative body with the inclusion of women and minority groups;**

(b) **States should implement consistent planning approaches for all assemblies that follow a model based on assessing threat and risk and that incorporate human rights laws and standards as well as ethics;**

(c) **Public authorities, including law enforcement, must be able to evidence their attempts to genuinely engage with assembly organizers and/or participants of assemblies;**

(d) **Law enforcement agencies should ensure there is an accessible point of contact within the organization before, during and after an assembly. The point of contact should be trained in communication and conflict management skills and respond to security issues and police conduct as well as to substantive demands and views expressed by the participants. The liaison function should be separate from other policing functions;**

(e) **States and law enforcement bodies should ensure that post-event debriefing mechanisms for assemblies are established permanently to facilitate learning and ensure the protection of rights;**

(f) **Law enforcement should cooperate with stewards, where organizers choose to arrange them for an assembly. Stewards should be clearly identifiable and should receive appropriate training and briefing. Authorities should not require organizers to provide stewards;**

(g) **Intrusive anticipatory measures should not be used in an assembly. Participants on their way to an assembly should not be stopped, searched or arrested unless there is a clear and present danger of imminent violence.**

E. Force shall not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law

50. States and their law enforcement agencies and officials are obligated under international law to respect and protect, without discrimination, the rights of all those who participate in assemblies, as well as monitors and bystanders.[34] The normative framework governing the use of force includes the principles of legality, precaution, necessity, proportionality and accountability.

51. The principle of legality requires that States develop a domestic legal framework for the use of force, especially potentially lethal force, that complies with international standards (see A/HRC/26/36, para. 56). The normative framework should specifically restrict the use of weapons and tactics during assemblies, including protests, and include a formal approval and deployment process for weaponry and equipment.[35]

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[34] The conduct of law enforcement officials is governed, inter alia, by human rights law, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. See also the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

[35] See, for example, Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (2015), p. 46.

52. The principle of precaution requires that all feasible steps be taken in planning, preparing, and conducting an operation related to an assembly to avoid the use of force or, where force is unavoidable, to minimize its harmful consequences. Even if the use of force in a particular situation complies with the requirements of necessity and proportionality, but the need to use force could reasonably have been prevented from arising in the first place, a State may be held accountable for a failure to take due precautionary measures.[36] Training should include techniques of crowd facilitation and management consonant with the legal framework governing assemblies.[37] States must ensure that their law enforcement officials are periodically trained in and tested on the lawful use of force, and on the use of the weapons with which they are equipped.[38]

53. On the basis of a risk assessment, equipment for law enforcement officials deployed during assemblies should include both appropriate personal protective equipment and appropriate less-lethal weapons.[39] Weapons and tactics should allow for a graduated response and de-escalation of tensions. Accordingly, the provision of a firearm to law enforcement officials with no less-lethal alternative other than a baton is unacceptable.

54. Where necessary, officials must be appropriately protected with equipment, such as shields, helmets and stab- and/or bulletproof jackets, with a view to decreasing the need for any use of weapons by law enforcement. Equipment and weapons that cannot achieve a legitimate law enforcement objective or which present unwarranted risks, particularly in the circumstances of an assembly, should not be authorized for use.[40]

55. States are required to procure less lethal weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury.[41] Less-lethal weapons must be subject to independent scientific testing and approval, and used responsibly by well-trained law enforcement officials, as such weapons may have lethal or injurious effects if not used correctly or in compliance with international law and human rights standards. States should work to establish and implement international protocols for the training on and use of less-lethal weapons.

56. A growing range of weapons that are remote controlled are becoming available, particularly in the context of the policing of assemblies. Great caution should be exercised in this regard. Where advanced technology is employed, law enforcement officials must, at all times, remain personally in control of the actual delivery or release of force (see A/69/265, paras. 77-87).[42]

57. The use of force by law enforcement officials should be exceptional,[43] and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat.

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[36] European Court of Human Rights, *McCann and Others v. United Kingdom*, application No. 18984/91, 27 September 1995.

[37] Principle 20 of the Basic Principles, and OSCE/ODIHR, *Guidelines*, para. 147.

[38] Principle 19 of the Basic Principles.

[39] Principle 2 of the Basic Principles. Less-lethal weapons may still have lethal consequences or affect bystanders (see principle 3 of the Basic Principles).

[40] See Amnesty International, *Use of Force Guidelines*, chap. 6.

[41] Ibid.

[42] See also African Commission on Human and Peoples' Rights, general comment No. 3 (2015) on the African Charter on Human and Peoples' Rights: the right to life (article 4), para. 31.

[43] See the commentary to article 3 of the Code of Conduct for Law Enforcement Officials.

58. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit.

59. The principles of necessity and proportionality apply to the use of all force, including potentially lethal force. Specific rules apply to the use of firearms for law enforcement, also during assemblies.[44] Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary).

60. Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (see A/HRC/26/36, para. 75). Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat; this is sometimes referred to as the protect life principle (ibid., para. 70).

61. Dispersing an assembly carries the risk of violating the rights to freedom of expression and to peaceful assembly as well as the right to bodily integrity. Dispersing an assembly also risks escalating tensions between participants and law enforcement. For these reasons, it must be resorted to only when strictly unavoidable. For example, dispersal may be considered where violence is serious and widespread and represents an imminent threat to bodily safety or property, and where law enforcement officials have taken all reasonable measures to facilitate the assembly and protect participants from harm. Before countenancing dispersal, law enforcement agencies should seek to identify and isolate any violent individuals separately from the main assembly and differentiate between violent individuals in an assembly and others. This may allow the assembly to continue.

62. International law allows for dispersal of a peaceful assembly only in rare cases. For example, a peaceful assembly that incites discrimination, hostility or violence, in contravention of article 20 of the International Covenant on Civil and Political Rights, may warrant dispersal if less intrusive and discriminatory means of managing the situation have failed. Similarly, while mere inconvenience to others,[45] or temporary disruption of vehicular or pedestrian traffic, are to be tolerated, where an assembly prevents access to essential services, such as blocking the emergency entrance to a hospital, or where interference with traffic or the economy is serious and sustained, for example, where a major highway is blocked for days, dispersal may be justified. Failure to notify authorities of an assembly is not a basis for dispersal.

63. Only governmental authorities or high-ranking officers with sufficient and accurate information of the situation unfolding on the ground should have the authority to order dispersal. If dispersal is deemed necessary, the assembly and participants should be clearly and audibly informed, and should also be given reasonable time to disperse voluntarily.[46] Only if participants then fail to disperse may law enforcement officials intervene further.

64. As part of their responsibility to ensure accountability, States must establish effective reporting and review procedures to address any incident in relation to an assembly during which a potentially unlawful use of force occurs.[47]

65. A clear and transparent command structure must be established to minimize the risk of violence or the use of force, and to ensure responsibility for unlawful acts or omissions

[44] Principle 9 of the Basic Principles.

[45] See Inter-American Commission on Human Rights, *Report on Citizen Security*, para. 198.

[46] See OSCE/ODIHR, *Guidelines*, para. 168.

[47] Principle 22 of the Basic Principles, and article 8, with commentary, of the Code of Conduct.

by officers.[48] Proper record keeping of decisions made by command officers at all levels is also required. Law enforcement officials must be clearly and individually identifiable, for example by displaying a nameplate or number. In addition, there should be a clear system of record keeping or register of the equipment provided to individual officers in an operation, including vehicles, firearms and ammunition.

66. As a general rule, the military should not be used to police assemblies. In exceptional circumstances where this becomes necessary, the military must be subordinate to civilian authorities.[49] The military must also be fully trained in, adopt and be bound by international human rights law and principles, as well as any law enforcement policy, guidelines and ethics, and be provided with any other training and equipment necessary. In order to comply with these requirements, the State must put measures in place far in advance, should such a situation arise later.

67. **Practical recommendations:**

(a) **States should ensure that law enforcement officials have the equipment, training and instructions necessary to police assemblies wherever possible without recourse to any use of force;**

(b) **Tactics in the policing of assemblies should emphasize de-escalation tactics based on communication, negotiation and engagement. Training of law enforcement officials should include pre- and in-service instruction in both classroom and scenario-based settings;**

(c) **Before the selection and procurement of equipment, including for less-lethal weapons, by law enforcement agencies for use in assemblies, States should subject such equipment to a transparent and independent assessment to determine compliance with international human rights law and standards. In particular, equipment should be assessed for accuracy, reliability and its ability to minimize physical and psychological harm. Equipment should be procured only where there is sufficient capacity to train officers effectively on its proper use;**

(d) **Specific regulations and detailed operational guidance should be developed and publicly disseminated on the use of tactical options in assemblies, including weapons, which, by design, tend to be indiscriminate, such as tear gas and water cannons. Training must encompass the lawful and appropriate use of less-lethal equipment in crowds. Law enforcement officials should also be properly trained on protective equipment and clearly instructed that such equipment should be used exclusively as defensive tools. States should monitor the effectiveness of the training in the prevention of abuse or misuse of weapons and tactics;**

(e) **Automatic firearms should not be used in the policing of assemblies under any circumstances;**

(f) **Autonomous weapons systems that require no meaningful human control should be prohibited, and remotely controlled force should only ever be used with the greatest caution;**

(g) **States should develop comprehensive guidelines on the dispersal of assemblies in accordance with international human rights law and principles. Such guidelines should be made public and provide practical guidance to law enforcement officials detailing the circumstances that warrant dispersal, all steps required to be**

[48] Principles 24-26 of the Basic Principles.

[49] Commentary to article 1 of the Code of Conduct.

taken before a decision to disperse (including de-escalation measures), and who may issue a dispersal order;

(h) **Effective systems for monitoring and reporting on the use of force must be established by the State, and relevant information, including statistics on when and against whom force is used, must be easily accessible to the public;**

(i) **The United Nations High Commissioner for Human Rights should convene an expert group to examine the application of the international human rights framework to less-lethal weapons and unmanned systems for law enforcement purposes, including with a focus on their use in the context of assemblies;**

(j) **Effective controls should be established at national and international levels prohibiting the trade in policing and crowd-control equipment, including surveillance technology, where a serious risk exists that they could, in the context of assemblies, facilitate unlawful killings, torture or other cruel, inhuman or degrading treatment or punishment, or other human rights violations or abuses.**

F. Every person shall enjoy the right to observe, monitor and record assemblies

68. All persons enjoy the right to observe, and by extension monitor, assemblies. This right is derived from the right to seek and receive information, which is protected under article 19 (2) of the International Covenant on Civil and Political Rights. The concept of monitoring encapsulates not only the act of observing an assembly, but also the active collection, verification and immediate use of information to address human rights problems.[50]

69. A monitor is generally defined as any non-participant third-party individual or group whose primary aim is to observe and record the actions and activities taking place at public assemblies.[51] National human rights institutions, ombudsmen, intergovernmental entities and civil society organizations all commonly act as monitors. Journalists, including citizen journalists, play an important role.[52]

70. States have an obligation to protect the rights of assembly monitors. This includes respecting and facilitating the right to observe and monitor all aspects of an assembly, subject to the narrow permissible restrictions outlined in article 19 (3) of the International Covenant on Civil and Political Rights. Monitors retain all other human rights. The State should fully investigate any human rights violation or abuse against monitors, and should pursue prosecution and provide adequate remedy. The protections afforded to monitors apply irrespective of whether an assembly is peaceful.

71. Everyone — whether a participant, monitor or observer — shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent — sometimes referred to as the right to "record back". The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.

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[50] Office of the United Nations High Commissioner for Human Rights, *Training Manual on Human Rights Monitoring* (United Nations publication, Sales No. E.01.XIV.2), para. 28.

[51] OSCE/ODIHR, *Guidelines*, para. 201.

[52] See, for example, OSCE, "Special report: handling of the media during political demonstrations" (2007).

72. **Practical recommendations:**

(a) **States should ensure that a comprehensive community engagement strategy is in place that includes programmes and policies designed to build trust and communication among law enforcement officials, the media and other assembly monitors;**

(b) **Authorities should proactively engage with monitors by communicating consistently before, during and after an assembly; by providing access and information to members of the media and other monitors; and by considering and responding to monitors' reports after assemblies;**

(c) **Authorities should routinely notify national human rights institutions or other relevant independent oversight bodies of anticipated assemblies and facilitate the access required for them to monitor properly all phases of the assembly;**

(d) **States should prohibit by law any interference with the recording of an assembly, including the seizure or damage of any equipment, except that pursuant to a warrant from a judge, where the judge considers that it has probative value.**

G. The collection of personal information in relation to an assembly must not interfere impermissibly with privacy or other rights

73. The collection of accurate information by law enforcement may be useful to the proper management of assemblies, enabling law enforcement to discharge their responsibilities to prepare for and facilitate peaceful assemblies. The collection and processing of personal information, such as through recording devices, closed-circuit television and undercover policing, must comply with protections against arbitrary or unlawful interference with privacy.

74. Legislation and policies regulating the collection and processing of information relating to assemblies or their organizers and participants must incorporate legality, necessity and proportionality tests. Given the intrusiveness of such methods, the threshold for these tests is especially high. Where they interfere with the exercise of rights, data collection and processing may represent a violation of the rights to freedom of peaceful assembly and expression.

75. The capacity to use communication technologies securely and privately is vital to the organization and conduct of assemblies. Restrictions to online access or expression must be necessary and proportionate and applied by a body independent of any political, commercial or other unwarranted influences, and there should be adequate safeguards against abuse (see A/HRC/17/27, para. 69). The practice of blocking communications — impeding the organization or publicizing of an assembly online — rarely satisfies these requirements (ibid., para. 31).

76. While there may be legitimate law enforcement and accountability reasons to record an assembly, the act of recording participants may have a chilling effect on the exercise of rights, including freedom of assembly, association and expression. Recording peaceful assembly participants in a context and manner that intimidates or harasses is an impermissible interference to these rights.

77. The use of undercover officers to collect intelligence relating to assemblies is problematic. It is highly intrusive and carries a high risk of rights violations and therefore should not be allowed unless reasonable grounds exist to suspect that a serious criminal act is likely to be committed. Authorities should consider whether the proposed undercover activity is the only way to secure the required information, and whether the value of the

information justifies the intrusion. This should take into account the impact on the rights of all those affected, not only the targets.

78. **Practical recommendations:**

(a) **Domestic law should require that the public are notified when they are, or may be, recorded during an assembly. This may, for example, require temporary signage along the planned assembly route indicating fixed cameras, or advisories that unmanned aerial vehicles are filming;**

(b) **States should implement robust and appropriate protections of public privacy and safety prior to the adoption of any biometric technologies, including facial recognition software, in the context of assemblies;**

(c) **States should develop and implement laws and policies requiring that personal information may be collected or retained only for a lawful, legitimate law enforcement purpose. Such information should be destroyed after a reasonable time period set out in law;**

(d) **Relevant information should however be retained where it depicts use of force, detention or arrest, or dispersal, or where it relates to the subject of a complaint; or where law enforcement, oversight authorities or the subject of the information have a reasonable suspicion that a crime or misconduct has been committed;**

(e) **States should put in place mechanisms whereby individuals can ascertain whether and, if so, what information has been stored, and be provided with access to an effective process for making complaints relating to the collection, retention and use of their personal information and that can lead to rectification or expungement;**

(f) **States should put in place clear democratic systems of control for undercover policing — through consistent legislation, regulations and policies — that explicitly incorporate necessity and proportionality tests and that set out clearly how risks of intrusion are to be assessed and managed. This should include an internal review process, as well as oversight by an independent, external body or bodies. Authorization by judicial authority should be required for any undercover policing activity in the context of an assembly.**

H. Every person has the right to access information related to assemblies

79. The ability to access information is essential to enabling individuals to exercise their rights in the context of assemblies and to ensuring accountability. Information includes records held by a public body at any level or by private bodies performing public functions.[53]

80. The public should have easy, prompt, effective and practical access to such information, through proactive disclosure and the enactment of legislation to facilitate public access to information. Legislation facilitating such access should be based on the

[53] See Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 18. See also the Declaration of Principles on Freedom of Expression in Africa.

principle of maximum disclosure, establishing a presumption that information is accessible, subject only to a narrow system of exceptions.[54]

81. Exceptions to the right to information should be carefully tailored to protect overriding public and private interests, including privacy. Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information.[55] The onus should be on the public authority to demonstrate that the information falls within the scope of an exception.[56] Its decisions must be subject to oversight and review.

82. **Practical recommendations:**

(a) **States should proactively disseminate key information relating to the management of assemblies. Such information should include: laws and regulations relating to the management of assemblies; information regarding the responsibilities and procedures of agencies and bodies that manage assemblies; standard operating procedures and policies, including codes of conduct, governing the policing of assemblies; the types of equipment routinely used in policing assemblies; information on the training of law enforcement officers; and information on how to access accountability processes;**

(b) **States should enact comprehensive legislation, for example freedom of information acts, to facilitate public access to information, based upon the principle of maximum disclosure. States should manage information so that it is comprehensive and easily retrieved, and should respond promptly and fully to all requests for information;**

(c) **States should establish an effective oversight mechanism that has, inter alia, the power to receive and investigate complaints and to make binding orders for the release of information where it finds in favour of the applicant or complainant.**

I. Business enterprises have a responsibility to respect human rights in the context of assemblies

83. Business enterprises have a responsibility to respect human rights, including in the context of assemblies. This requires that businesses avoid causing or contributing to adverse human rights impacts through their own activities, and address adverse human rights impacts in which they are involved.[57] This extends to impacts that are directly linked to the operations, products or services of a business, such as where a business supplies less-lethal weapons or equipment or surveillance technologies which are used in the policing of assemblies.

84. The trend towards the privatization of public places, such as shopping malls, pedestrian precincts and squares, means that assemblies commonly occur on property owned by business enterprises, sometimes referred to as privately owned public space. While private landowners generally have the right to determine who may access their

[54] Joint declaration by the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur for Freedom of Expression on access to information (6 December 2004).

[55] Ibid.

[56] Ibid.

[57] Principles 11 and 13 (a) of the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31), annex.

property, the rights related to assembly may require positive measures of protection even in the sphere of relations between individuals.[58]

85. Business enterprises also play an increasingly prominent role in the policing of assemblies. For example, civilian private security services may perform a policing-type role while protecting private property or assets during an assembly, and private companies often play a role in surveillance (see A/HRC/23/39/Add.1, para. 33). Business entities should carry out human rights due diligence,[59] and where a potential impact on assembly and related rights is identified mitigate these risks. Civilian private security services should not perform policing-type functions in relation to assemblies. However, where this occurs, such services must respect and protect human rights[60] and should comply with the highest voluntary standards of conduct.[61]

86. Business entities commonly seek injunctions and other civil remedies against assembly organizers and participants on the basis, for example, of anti-harassment, trespass or defamation laws, sometimes referred to as strategic lawsuits against public participation. States have an obligation to ensure due process and to protect people from civil actions that lack merit.

87. A State can incur responsibility for violations of human rights by non-State actors if it: approves, supports or acquiesces in those acts; fails to exercise due diligence to prevent the violation; or fails to ensure proper investigation and accountability. States also have a duty to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct by business enterprises, and to hold to account private parties that are responsible for causing or contributing to an arbitrary deprivation of life in the State's territory or jurisdiction.

88. **Practical recommendations:**

(a) **States should protect individuals from interference with their rights in the context of assemblies by business enterprises, including by taking steps to comply with the responsibilities elucidated in the Guiding Principles on Business and Human Rights;**

(b) **Where privately owned spaces are open to the general public and serve a similar function as public spaces, they should be treated as a public space for the purposes of the rights to freedom of assembly and expression;**

(c) **States should introduce for assembly organizers and participants protections from civil lawsuits brought frivolously, or with the purpose of chilling public participation.**

J. The State and its organs shall be held accountable for their actions in relation to assemblies

89. The State bears an obligation to provide to those whose rights have been violated in the context of an assembly an adequate, effective and prompt remedy determined by a

[58] *Plattform Ärtze für das Leben v. Austria*, para. 32.

[59] See principles 17-21 of the Guiding Principles on Business and Human Rights.

[60] See the Guiding Principles on Business and Human Rights, and United Nations Office on Drugs and Crime, *State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety* (2014).

[61] See, for example, the Voluntary Principles on Security and Human Rights (2000), available from www.voluntaryprinciples.org/.

competent authority having the power to enforce remedies.[62] The right to remedy includes the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.

90. States must investigate any allegations of violations in the context of assemblies promptly and effectively through bodies that are independent and impartial. In addition, the procedural component of the right to life requires States to investigate any alleged unlawful or arbitrary killing. The failure of a State to properly investigate suspected unlawful or arbitrary killing is a violation of the right to life itself (A/70/304). Likewise, lack of accountability for violations of the rights to bodily integrity may itself constitute a violation of those rights.[63] Effective investigation includes the following factors: an official investigation initiated by the State; independence from those implicated; capability of determining whether the act was justified in the circumstances; a level of promptness and reasonable expedition; and a level of public scrutiny.[64]

91. Where appropriate, criminal and/or civil sanctions must be applied. Liability should extend to officers with command control where they have failed to exercise effective command and control. Where superior officers knew, or should have known, that law enforcement officials under their command resorted to the unlawful use of force or firearms, and they did not take all measures in their power to prevent, suppress or report such use, they should also be held responsible.[65]

92. The appropriate use of body-worn cameras by law enforcement personnel in the context of assemblies could assist the work of internal investigations or civilian oversight mechanisms. Such technology is in its infancy, and delicate balancing of potential intrusions into privacy should be considered, but at this stage there seems to be potential to promote accountability, where adequate safeguards are in place.

93. Prosecutors should carry out their functions impartially and without discrimination, and should give due attention to prosecuting crimes committed by public officials.[66] When law enforcement officials are prosecuted, the judiciary shall decide matters impartially, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect.[67] Defendants should be brought before an ordinary court or tribunal, and shall be availed of the fair trial protections guaranteed under international law.

94. In addition to guaranteeing accountability through judicial processes, States should implement additional levels of non-judicial oversight, including an effective internal investigations process and an independent oversight body. These systems should operate in addition to, and not as an alternative to, criminal, public and private legal remedies for police misconduct.[68] The role of a dedicated civilian oversight body may be complemented by the work of the national human rights institution or ombudsman.

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[62] See Human Rights Committee, general comment No. 31, para. 15. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[63] *McCann and Others v. United Kingdom*.

[64] European Court of Human Rights, *Isayeva v. Russia*, application No. 57950/00, 24 February 2005. See also A/HRC/26/36, para. 80.

[65] Principle 24 of the Basic Principles.

[66] Guidelines 13 (a) and 15 of the Guidelines on the Role of Prosecutors.

[67] Principle 2 of the Basic Principles on the Independence of the Judiciary.

[68] Council of Europe, Commissioner for Human Rights, "Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police" (12 March 2009), para. 25.

95. In relation to remedy, the State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.[69] Reparation should be proportional to the gravity of the violation and the harm suffered, and should include elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as access to relevant information concerning violations and reparation mechanisms.[70]

96. **Practical recommendations:**

(a) **States should ensure in law and practice that law enforcement officials do not have immunity from criminal or civil liability for cases of misconduct;**

(b) **States should establish and fund additional levels of non-judicial oversight, including an effective internal investigations process and a statutory independent oversight body. Where there is reason to believe a crime has been committed, the matter should be immediately referred to the prosecuting authority for proper and full investigation;**

(c) **A law enforcement officer who is under investigation, external or internal, should not be redeployed into the field until the investigation is complete and the officer is cleared of wrongdoing;**

(d) **States should grant a broad mandate to an independent oversight body that possesses all competence and powers for effective protection of rights in the context of assemblies. The mandate should allow the body to investigate complaints from the public, to accept referrals from police and to initiate investigations itself where it is in the public interest to do so. The body should investigate all cases of use of force by law enforcement. The oversight body should have full investigative powers, and complaints should be dealt with in an objective, fair and prompt fashion, according to clear criteria;**

(e) **States should encourage and facilitate law enforcement agencies to conduct ongoing non-adversarial peer review of policing operations, if possible by another law enforcement agency. Such reviews should be conducted in addition to and do not exclude the State's obligation to establish independent judicial review mechanisms for the investigation and sanctioning of human rights violations;**

(f) **States should consider the potential of information and communication technologies, such as body-worn cameras, in contributing towards accountability for violations by law enforcement personnel in the context of assemblies.**

III. Conclusion

97. **Assemblies can play a vital role in the protection and fulfilment of human rights and the democratic life of society. They should not be viewed as a threat, but rather as a means of dialogue in which the State should engage.[71] Nonetheless, ensuring the protection of the full range of rights arising in the context of assemblies can present challenges.**

98. **These practical recommendations provide guidance on how States might fulfil their obligations to protect and promote human rights in the context of assemblies.**

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[69] Principle 15 of the Basic Principles and Guidelines.

[70] Principle 11 of the Basic Principles and Guidelines.

[71] See Human Rights Council resolution 22/10 and A/68/299, para. 17.

However, the full value of the recommendations can only be realized if they are properly implemented at the national level. This will require deliberate steps on the part of States, international organizations, business enterprises, and civil society. The United Nations, through the Human Rights Council, including through the universal periodic review and other special mechanisms, as well as through the treaty bodies system and regional human rights bodies, should monitor compliance with these recommendations and should continue efforts to elaborate international legal standards with respect to assemblies.